81-2344

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ALEXANDER L. STEVAS,
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No.....

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1981

A,

Petitioner,

vs.

X, Y, & Z,

Respondents.

On Appeal From
The Supreme Court of Wyoming

PETITION FOR WRIT OF CERTIORARI

DALY, MAYCOCK, ANDERSON & TAYLOR, P.C.

John M. Daly
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QUESTIONS PRESENTED

Has the petitioner been denied due process and equal protection under the Fourteenth Amendment by rendition of the final decision in the Wyoming Supreme Court based on the evidence developed under the Wyoming Uniform Parentage Act by the District Court when the natural father has had no opportunity to establish his paternity or fitness for paternity?

Is the natural father entitled to judicial access to initiate a finding of his paternity and his fitness for paternity?

Did the Wyoming Supreme Court violate his rights of equal protection and due process by denying him such access?

PARTIES

A.....The Unwed Father

X.....The Minor Child Having the Same Surname of Y & Z

Y.....The Natural Mother

Z.....The Legal Father

The names of these parties were changed by the order of the District Court.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WYOMING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioner prays that a Writ of Certiorari issue to review the final Order and Judgment of the Supreme Court of the State of Wyoming, entered in this matter on March 8, 1982.

OPINIONS BELOW

The District Court of The Sixth Judicial District, Campbell County, Wyoming filed an opinion on May 22, 1981, dismissing the complaint of the petitioner and is printed in Appendix A hereto, infra, page A-1.

The opinion of the Supreme Court of Wyoming is recorded at 641 P2d 1222 and is printed in Appendix B hereto, infra, page B-1.

Purusant to such decision dated March 8, 1982, a mandate on affirmance was entered in the District Court for Campbell County,

Wyoming on March 25, 1982 and is printed in Appendix C hereto, infra, page C-1.

JURISDICTION

The decision of the Supreme Court of Wyoming, Appendix B, infra, page A-1, was entered on March 8, 1982. The jurisdiction of this court is invoked under 28 USC, §1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved is Section 1 of the Fourteenth Amendment to the Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdicition thereof are citizens of the United States and of the State wherein they reside. No State shall make any law shich shall abridge the privileges orimmunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions of the Wyoming Statutes sought by the petitioner to give him the same

rights as the other litigants to the use of the courts and judicial process are:

> W.S. (Wyoming Statutes Annotated 1977, Republished Edition) 14-2-101.
>
> (a) As used in W.S. 14-2-101 through 14-2-120, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes both the mother and child relationship and the father and child relationship and extends equally to every child and parent regardless of the marital status of the parents.
>
> (b) The parent and child relationship may be established between a child and;
>
> (i) The natural mother by proof of her having given birth to the child or as provided by W.S. 14-2-101 through 14-2-120;
>
> (ii) The natural father as provided by W.S. 14-2-101 through 14-2-120;
>
> (iii) An adoptive parent by proof of adoption.

The Statutes of the State of Wyoming providing to all parents a right to judicial determination of issues of fact, to present defenses and objections, to a trial of issues

and affording an opportunity to be heard are printed and attached hereto as Appendix D.

STATEMENT OF THE CASE

The unwed father, petitioner, A, and Y were married and divorced in a divorce decree dated June 26, 1979. Sometime after the divorce, A and Y co-habited and a child was conceived. Y and Z were then married on February 8, 1980 and a child was born August 3, 1980. The child X was given the same name of Z and Z was listed as the father on the birth certificate. The unwed father, A, then brought an action to establish his paternity and included by amended pleadings, his ex-wife, Y, her husband, Z, and the child, X.

It was stipulated by the parties prior to the hearing of the issue of standing by the court, that blood tests should be taken and the court so permitted said blood tests to be taken. This was done with the belief that the blood tests would indicate that the mother and

the unwed father were not the parents of the child born during the marriage of the mother and the legal father. Blood tests were a 98.82 positive indication that the plaintiff bringing the action was the father. An attorney was then appointed for the minor child.

The hearing was held realative to the issue of standing and the statutory rights of the plaintiff/petitioner to bring the action. Trial briefs were then filed by all attorneys. The plaintiff/petitioner argued he should have standing on due process and equal protection clauses of both the Wyoming and United States Constitution.

The trial court filed a letter of opinion. The court found that the issue of the case was legal issues and the district court stated that the admission was not a legislative oversight but intentional. The trial court found against the petitioner.

The petitioner appealed to the Wyoming Supreme Court. Argument was had and on March 8, 1982, the Wyoming Supreme Court in a 3-1-1 decision, found that the petitioner, unwed father did not have standing to bring an action to establish his parental rights.

REASONS FOR ALLOWANCE OF THE WRIT

When the Wyoming Supreme Court rendered its decision, affirming the judgment of the trial court upon this matter, the Wyoming Court denied to the petitioner-unwed father, the fundamental right of equal protection and the right of due process to be heard.

The Wyoming Court violated the constitutional rights of the unwed father in that in order to enforce the statute against him is to give the mother, the presumptive father and the child, the right of acts against him for proving the parent-child relationships while the statute fails to give him the same right of action. The statutory

mother is permitted to bring suit to establish a parent-child relationship against the biological father and to disrupt the family unit consisting of the mother, the presumed father and the child, in order to declare paternity in another, while the natural father is not permitted in the name of family unity to bring the same action.

The gender base classification substantially affects the interest of the appelant so as to deny him equal protection and due process of law. It impermissibly discriminates natural mothers and those natural fathers who assert their paternity in that the classification was substantially relating to an important governmental interest does not by its own terms achieve the worthwhile protection that it proclaims.

In 1980, Colorado decided the identical

same problem as Wyoming was faced with in R. McG. & C. W. v. J. W. & W. W., 615 P2d 666 (Co. 1980). Wherein the Colorado court found that to deny the father access to establish his paternity and have a fitness hearing of his paternity, of his ability as a father, was to deny him equal protection and due process of law. A decision by the Wyoming Court therefore presents a conflict in two neighboring states under nearly identical uniform parentage acts.

The right to due process of law to present evidence and prove a person is a father, to deny this is unreasonable arbitrary and capricious, a denial of due process. It was decided by the California courts in, In Re, Lisa R., 532 P2d 123 (Ca. 1975), "The right to conceive and raise ones children have been deemed essential;" the basic rights of civil man and the basic rights are far more precious than property right; it is a cardinal with us that the custody and care and the

nurture of a child reside first with the parents whose primary function and freedom includes the preparations, the obligations, the State neither can supply nor hinder.

Stanley v. Illinois, 405 U.S. 645 (1971). The right to associate with ones immediate family is a fundamental liberty protected by both the State and Federal Constitutions, D. S. & R. S. v. The Department of Public Assistance and Social Service, 607 P2d 911 (Wyo. 1980).

The statutory classification of Wyoming does not substantially relate to an important govermental interest and the gender based distinction must serve some important govermental objectives or be substantially related to the achievement of those objectives to make the test of equal protection, R. McG. & C. W. v. J. W. & W. W.

The state has a substantial interest in protecting the rights of parents to their

children, Caban v. Mohammed, 441 U.S. 380 60 Lawyers Edition 2nd 297 (1979).

It is respectfully submitted, therefore, that the natural father has the right to enjoy the benefit of the company of his children along with the natural mother and that to deny him the judicial access to determine who his children might be, by statute, when the natural mother, the presumptive father and the child can all seek action against him, is to deny the natural father equal protection and due process of law.

CONCLUSION

This Petition for Writ of Certiorari should, for the foregoing reasons, be granted.

Respectfully submitted,

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